

# KEENAN & BHATIA, LLC

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**BY CM/ECF**

September 5, 2023

The Honorable Katherine Polk Failla  
United States District Judge  
Southern District of New York

The Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York

RE: *Azor-El, et al. v. City of New York, et al.*, 1:20-cv-03650-KPF (and related cases)  
*Miller, et al. v. City of New York, et al.*, 1:21-cv-02616-PKC  
Conditional Objection and Request for Clarification

The undersigned is not  
in a position to render an  
advisory opinion based upon  
a letter from counsel or  
an action not before the  
undersigned. Counsel should  
confer with class counsel and  
counsel for defendants in *Miller*  
to see if a stipulation can be  
reached. *SO ORDERED*

9/7/23  
Matthew J. Miller  
docket in  
back

Dear Judge Failla and Judge Castel:

The undersigned firm represents the nine named plaintiffs in the above-captioned *Azor-El* litigation.<sup>1</sup> The *Azor-El* case concerns NYCDOC's response to the COVID-19 pandemic. The plaintiffs anticipate moving for certification of a class of all persons confined in NYCDOC facilities during the pandemic.

Mr. Azor-El contacted me to let me know he had received notice of the preliminarily-approved settlement in the *Miller* litigation, which concerns restrictive confinement in NYCDOC. Apparently, Mr. Azor-El is a member of the *Miller* class. Other plaintiffs in the *Azor-El* litigation may also be class members in *Miller*. Mr. Azor-El's call was the first time I had heard of the *Miller* litigation.

I have followed up with class counsel in *Miller*, as well as counsel representing the City in *Azor-El*, to ensure that approval of and participation in the settlement in *Miller* would not moot or release any of the claims at issue in *Azor-El*. It is my understanding that *Miller* class counsel does not see any overlap between the claims released in *Miller* and the claims at issue in *Azor-El*. The City also does not seem to contend that *Miller* would release any claims in *Azor-El*.

While it does not appear that the settlement of *Miller* would release any claims in *Azor-El*, on

<sup>1</sup> The nine named Plaintiffs in *Azor-El* are: Jean Azor-El, Anthony Medina, Ramon Gomez, Ronnie Cole, Dakwan Fennell, James Carter, Maurice Barnar, Lance Kelly, and William Clanton.

behalf of all nine named Plaintiffs in *Azor-El*, as well as members of the putative class in *Azor-El*, we object to any final approval of the *Miller* settlement that would release *Azor-El* claims, as a release of claims in *Azor-El* has not been through the Rule 23(e) process before the Court presiding over *Azor-El*.

This issue can be solved easily by clarifying the scope of the *Miller* release. We respectfully ask the *Miller* Court to include in its final settlement approval order a term that “the settlement of this action does not release any claims at issue before the Court in *Azor-El v. City of New York*, Case 1:20-cv-03650-KPF (S.D.N.Y.),” or words to that effect.

If the Court chooses not to include such language, we respectfully request that people who are members of both the *Miller* and putative *Azor-El* classes receive supplemental notice and opportunity to opt-out.

We appreciate the Court’s consideration.

Respectfully submitted,

KEENAN & BHATIA, LLC

*By: E.E. Keenan*

Attorneys for Plaintiffs